

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CH2M HILL, INC.,

Plaintiff,

v.

Civil Action 2:10-cv-00263

Judge Michael H. Watson

Magistrate Judge E. A. Preston Deavers

**OHIO RIVER CLEAN FUELS,
LLC, et al.,**

Defendants.

ORDER

This matter is before the Court for consideration of Plaintiff's Motion for Default Judgment (Doc. 6). For the reasons that follow, the Court **DENIES** Plaintiff's Motion **WITHOUT PREJUDICE**.

Plaintiff moves for the clerk to enter default judgment pursuant to Federal Rule of Civil Procedure 55(b)(1). Nevertheless, the docket fails to indicate that prior to seeking a default judgment, Plaintiff first obtained an entry of default as contemplated by Federal Rule of Civil Procedure 55(a). An entry of default is distinct from entry of a default judgment. *See O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003); S.D. Ohio Civ. R. 55.1(b). By asking only for a default judgment, Plaintiff has failed to follow the sequential procedure set forth in Rule 55. *See Heard v. Caruso*, 351 Fed. Appx. 1, 15 (6th Cir. 2009) ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).") (internal quotation omitted). The Court

therefore cannot enter a default judgment under Rule 55(b). *Cf. O.J. Distrib., Inc.*, 340 F.3d . at 352 (“Rule 55 permits the clerk to enter a default when a party fails to defend an action as required. The court may *then* enter default judgment.”) (emphasis added)) (quoting *Weiss v. St. Paul Fire & Marine Ins. Co.*, 283 F.3d 790, 794 (6th Cir. 2002)).

Accordingly, without expressing any opinion as to whether Plaintiff is entitled to an entry of default or subsequent default judgment, the Court **DENIES** Plaintiff’s Motion for Default Judgment **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

September 24, 2010

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge